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No. 77-82

In the
Supreme Court of the United States
October Term, 1977

CHARLOTTE CICHANSKI,
Petitioner,

vs.

HONEYWELL INC.,
Respondent.

On Petition For A Writ Of Certiorari To The
United States Court of Appeals
For The Seventh Circuit

BRIEF FOR HONEYWELL INC. IN OPPOSITION

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OPINIONS BELOW

The opinions of the District Court and the Court of Appeals are unreported. Copies are included in Petitioner's Appendix B (Pet. App. 2-7)[1] and Appendix C (Pet. App. 8-14).

JURISDICTION

The judgment of the Court of Appeals was entered on January 13, 1977 (Pet. App. 8) and a Motion for Rehear-

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[1] Citation to Petitioner's Appendix.

ing was denied on February 15, 1977 (Pet. App. 15). This Court's jurisdiction is invoked under 28 U.S.C. 1254.

QUESTIONS PRESENTED

1. Whether the standards for the disposition of private, non-class actions challenging employment discrimination prohibited by Title VII of the Civil Rights Act of 1964, as amended, as articulated by the Supreme Court in *McDonnell Douglas* v. *Green*, 411 U.S. 792 (1973) are mandatory on the Circuit Courts of Appeals.

2. Whether a private non-class action brought pursuant to Title VII of the Civil Rights Act of 1964, as amended, challenging employment discrimination based on sex is governed by the same standards of disposition as comparable actions challenging employment discrimination based on race.

STATUTES INVOLVED

Title VII of the Civil Rights Act of 1964, 78 Stat. 253, 42 U.S.C. §2000e et seq., as amended:

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(42 U.S.C. §2000e-2(a))

STATEMENT

Petitioner, Charlotte Cichanski, is a 55 year old woman who was first employed by the Respondent, Honeywell Inc. (Honeywell), on October 16, 1950 and was terminated by Honeywell on February 10, 1972. Following her termination, Ms. Cichanski filed a charge of sex discrimination with the Equal Employment Opportunity Commission (case file number TCH 2-2248) which was processed in accordance with the mandate of Title VII. She requested and was given a right to sue letter on February 8, 1974, after which Ms. Cichanski filed the instant action on March 20, 1974, in the United States District Court for the Northern District of Illinois.

During her employment with Honeywell, Ms. Cichanski performed various office clerical duties in the Production Planning, Stationery, Accounting, Methods, Applications, Steno Pool, and Quality Departments. For the last ten years of her employment with Honeywell, Ms. Cichanski worked as a secretary in the Quality Department, the final three years of which were spent under the supervision of Mr. Sanford Egesdahl. Other employees in the Quality Department (excluding supervisors and clerical) were engineers and technicians, all of whom were males and several of which were also supervised by Mr. Egesdahl. In the eight months preceding her termination on February 10, 1972 Ms. Cichanski requested to be transferred to work in a location away from Egesdahl. This request was denied.

Ms. Cichanski received salary increases while employed by Honeywell, the last two of which were granted by Mr. Egesdahl. Approximately once each year between 1964 and 1970 a formal written evaluation of her work performance was prepared by her supervisor at the time, for

the purpose of recommending her salary be increased. On each of those occasions her performance was rated for that purpose as "outstanding", according to the Honeywell Compensation Manual which was first issued in 1967. When Mr. Egesdahl became her supervisor in 1969 Ms. Cichanski was being paid in the upper part of the salary range applicable to her job classification. Thereafter, on two occasions (once in October, 1969 and again in December, 1970) he recommended and was given approval to increase her salary, to maintain her relative position within the salary range applicable to her job category. (Salary ranges are increased from time to time for various job categories) He did not recommend or increase her salary thereafter.

In 1969, and continuing into 1972, Honeywell was in the process of installing a procedure for developing written work objectives for office employees to be used for salary administration purposes. The procedure was first installed for management employees and progressively thereafter for engineers, technicians, administrative, and clerical employees. This procedure had not yet been applied to Ms. Cichanski's job by February 10, 1972, the date of her termination. However, in June, 1970 a "master list" of secretarial duties was written and issued to the clerks in the Quality Department against which she was evaluated. Also, shortly prior to her termination a Quarterly Manpower Management Review procedure (another method of evaluating an employee's performance) was implemented; all employees under Mr. Egesdahl's supervision were rated by this procedure, including Ms. Cichanski on February 7, 1972.

In 1970 and continuing through February 7, 1972, Mr. Egesdahl received complaints from other employees (both

male and female) in the Quality Department concerning Ms. Cichanski's conduct at work and personally encountered resistance by her to his work direction. Attempts to resolve these matters were made without success. On February 7, 1972, following a final dispute between himself and Ms. Cichanski, Mr. Egesdahl recommended that she be discharged. That recommendation was approved by several higher Honeywell officials. On February 10, 1972, Mr. Egesdahl told Ms. Cichanski she was terminated because of her overall negative attitude, inability to get along with others and take work direction, and for being disruptive.

Honeywell had in effect, during the time of Mr. Egesdahl's supervision of Ms. Cichanski, certain written "Personnel Policies and Procedures" covering methods to be followed by management in dealing with an apparently failing employee and terminating that employee if such action was necessary. Those procedures specified that the cause of the employee's failure was to be identified and an attempt was to be made to correct this cause prior to termination. The procedures further specified, however, that ". . . termination is the appropriate action . . ." if the employee has a ". . . fundamental lack of willingness . . ." to succeed in his job assignment. If termination was selected, and the employee was 40 or more years of age and had 15 or more years of Honeywell service, special separation pay could be paid. Special separation pay of that type was approved for the petitioner in less than the normal time stated in Honeywell policy to obtain such approval, but early approval had also been obtained in other cases for employees similarly situated.

In July, 1971 Ms. Cichanski requested a transfer away from Mr. Egesdahl's supervision. At that time Honeywell

was in the process of moving its plant facilities from Morton Grove, Illinois to Arlington Heights, Illinois; the department in which her husband worked (also a Honeywell employee and with whom she normally rode to work) had already been transferred, but the Quality Department in which she worked had not.[2] Testimony was presented at trial that Honeywell had settled policies of (1) not transferring any employees to the new Arlington Heights facility in advance of their work being transferred and (2) not transferring employees to different work merely to assuage personality conflicts. Ms. Cichanski was told her request to be transferred was denied for these reasons. Moreover, no evidence was introduced to show any openings existed (with one exception) to which she could have been transferred.

[2] Ms. Cichanski and her work were, in fact, transferred to the new Arlington Heights facility in December, 1971, with the rest of the Quality Department.

ARGUMENT

1. Petitioner first contends that the District Court ruling (Pet. App. 2-7) and the Court of Appeals ruling (Pet. App. 8-14) did not apply the standards of proof set forth in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 for the disposition of private, non-class actions alleging employment discrimination under Title VII of the Civil Rights Act of 1964. She argues certiorari should be granted to resolve whether adherence to such standards is mandatory. However, this issue is not raised by the record below. Rather, the record indicates that both the trial court and the Court of Appeals applied the standards of *McDonnell Douglas* and their determination that they were met is amply supported by the record.

At no time in the proceedings below did Honeywell, nor does it now, contend that the petitioner's complaint should be considered by standards other than those set out in *McDonnell Douglas*. Indeed, at the close of petitioner's case in chief, Honeywell moved for dismissal under Rule 41(b) of the Feedral Rules of Civil Procedure, arguing that she had not established a *prima facie* case as required under *McDonnell Douglas* (R. 178).[3]

The trial court denied that motion and required Honeywell to proceed with its defense (R. 194). After consideration of all the evidence, the trial court ruled for Honeywell on all issues. Thereafter, appeal was taken to the

[3] Citation to record transcript, now on file in the United States District Court for the Northern District of Illinois Eastern Division.

Court of Appeals for the Seventh Circuit by the petitioner, principally on the ground that Honeywell had not met the burden required by *McDonnell Douglas* of coming forward with evidence showing a legitimate, non-discriminatory reason for discharging her and refusing to transfer or promote her. (Pet. App. 10) After consideration of all the evidence, the Court of Appeals rejected this contention and sustained the finding of the trial court. Thereafter, it unanimously denied a petition for a rehearing *en banc* (Pet. App. 15). There is no question that petitioner, respondent and the Courts below have relied on the standard of proof set out by this Court in *McDonnell Douglas*. Thus, no issue is raised by the record as to whether the standards of proof set forth in *McDonnell Douglas* are mandatory.

Moreover, the petitioner's claim that the evidence does not support the finding that standards set out in *McDonnell Douglas* were met, is without merit. Petitioner testified at trial that she had been employed by Honeywell for 21 years, during which time she received periodic merit salary increases and favorable work evaluations, that work rules with respect to lunch periods, coffee breaks and late arrival were differentially applied between males and females, and that certain written personnel policies were not followed when she was discharged. Further, statistical evidence was introduced showing more men are employed by Honeywell in certain positions and at generally higher salaries than are women. The trial court found this evidence gave rise to a possible inference of discriminatory conduct by Honeywell in its refusal to promote or transfer the petitioner and its termination of her employment. After hearing all the evidence, however, it ruled this "rather questionable" prima facie case was

"completely overcome by evidence to the contrary" (Pet. App. 6).

Honeywell established, in rebuttal, that, although the petitioner had formerly been a satisfactory employee, her work performance and general attitude deteriorated during the last few years of her employment (R. 255). Her job was to provide secretarial assistance to her supervisor as well as a number of engineers and technicians, and to assist other clerical employees having similar duties in the Quality Department. In 1970 a dispute occurred at work between the petitioner and another female clerk in the Quality Department. After discussion, a written list of work duties and expected conduct of clerks in the Quality Department was developed and issued to them. It stressed the necessity of being cooperative and courteous in their work (R. 269-270). On multiple occasions thereafter the petitioner's conduct towards other employees in her department (both male and female) caused complaints to be made to her supervisor, Mr. Egesdahl (R. 165-166, 266-269, 275). Moreover, she began to reject his work directions on several occasions and denied any fault when Mr. Egesdahl attempted to correct her behavior (R. 271-274, 277-278). Clearly, a "personality conflict" developed between the petitioner and Mr. Egesdahl. Finally, on February 7, 1972 while Mr. Egesdahl was attempting to evaluate her work performance with her an argument occurred between them, and the petitioner refused to continue the discussion without the presence of the Personnel Director. After having attempted to induce a change in the petitioner's conduct over a two-year period, Mr. Egesdahl then decided to recommend that she be discharged. When she was discharged on February 10, 1972 the petitioner was told by Mr. Egesdahl that his

reason for doing so was her overall negative attitude, her inability to get along with others and take work direction, and for being disruptive (R. 280-283).

Petitioner contends that the Court of Appeals erred in sustaining the trial court's crediting of this evidence. However, nothing was presented to refute the evidence that the petitioner had such disputes and controversies with her co-workers and Mr. Egesdahl. Additionally, she presented no evidence to show that her sex was a factor in Honeywell's determination to terminate her employment. Statistical evidence was introduced at trial showing that 48 persons (both male and female) were employed in the Quality Department between 1969 and 1974, but no attempt was made to show that any of them had engaged in conduct of a comparable nature without incurring discharge (R. 128; Pl. exhibit 17[4]). The Courts of Appeals have repeatedly recognized that personality conflicts and a bad attitude towards work, other employees, and supervision are legitimate, nondiscriminatory reasons for an employer's employment decisions. *Thompson* v. *McDonnell Douglas Corp.*, 552 F.2d 220 (8th Cir. 1977); *Ayon* v. *Sampson*, 547 F.2d 447 (9th Cir. 1976); *Martin* v. *Thompson Tractor Co.*, 487 F.2d 510 (5th Cir. 1973); *Ammons* v. *Zia Corp.*, 448 F.2d 117 (10th Cir. 1971).

In an attempt to overcome such proof and lack of rebuttal, petitioner alleges that the method used by Mr. Egesdahl to reach his decision to terminate her was discriminatory. She argues that Mr. Egesdahl made a "subjective evaluation" of her conduct, while the work performance of male employees under his supervision was

[4] Citation to record petitioner's exhibit, now on file in the United States District Court for the Northern District of Illinois, Eastern Division.

evaluated under a more formal procedure.[5] While it is true that subjective judgments are sometimes subject to healthy skepticism, the fact that a determination is reached subjectively does not destroy the rebuttal weight to which it is entitled. *McDonnell Douglas Corp.* v. *Green, supra.* Detailed testimony was presented by Mr. Egesdahl of the incidents leading to that judgment, and there is no evidence that his concern with Ms. Cichanski's conduct was tainted with impermissible bias. It was not error for the Court to credit his clear testimony, over a mere inference that it was biased because he was male and that a written record of the incidents was not prepared. Indeed, petitioner's witness Nancy Norris (another clerk in the Quality Department) testified that Mr. Egesdahl ". . . treated me fine" (R. 152). On the other hand, the petitioner testified:

"Q. Mrs. Cichanski, between 1950 and 1969 when Mr. Egesdahl became your supervisor, how did your supervisors at Honeywell treat you?
A. Very, and with respect.
Q. Did you ever have any disagreement with them?
A. Not that I recall. If there were any, they were very, very minor. (R. 63)
Q. . . . do you recall whether Mr. Egesdahl treated you differently from the way in which any of your previous supervisors treated you?
A. Yes. He never asked me to do things in a nice way. He just barked his orders at me. He was abrupt and unreasonable. He was petty." (R. 72)

[5] Honeywell witnesses testified that the more formal evaluation procedure was necessarily implemented in stages to various job categories to have it operate properly, and that implementation procedure had not reached Ms. Cichanski's job before she was terminated (R. 39-40, 50-51, 207). Thus, the method of implementation was related to job category, not the sex of the incumbents.

Clearly, the petitioner did not appreciate the manner of Mr. Egesdahl's work direction. However, the record is totally void that his mannerisms or judgments were sexually biased.

Petitioner places great emphasis on an incident that occurred on February 6, 1972 when Mr. Egesdahl told her not to leave work early. She alleges that was the reason for her discharge, and that Mr. Egesdahl did not discharge a male employee who was habitually late (Pet. 11-12).[6] The record shows that Mr. Egesdahl's directive to the petitioner, that she not leave work early, was caused by her leaving early on several prior occasions (R. 50). Similarly, the record shows Mr. Egesdahl had reprimanded the male employee about his work hours, and later when that employee learned that another absence had been noted, he voluntarily quit before anyone in management could talk to him about it (R. 51-52). No sexually disparate treatment is evident in even this isolated incident. More importantly, as the record demonstrates, at no point did Honeywell claim that the petitioner's work attendance was a reason for her discharge. Rather, it contended that she was discharged because ". . . during her last few years of employment, the plaintiff did not get along well with certain of her fellow employees, she did not perform her work load as well as her co-employees, and . . . she and Mr. Egesdahl had a serious conflict . . ." (Pet. App. 5).

Petitioner argues, however, that (1) ". . . In the six to eight months immediately preceding her termination, Ms. Cichanski made repeated requests for a transfer or promotion. . ." (Pet. 3-4), (2) Honeywell's personnel procedures specify ". . . reassignment is to be used where possible as an alternative to termination. . ." (Pet. 14),

[6] Citation to the Petition.

and (3) Honeywell's discharge action would not have been necessary if she had been granted a reassignment (Pet. 18). The record shows that when the petitioner asked for reassignment the stated reasons for her request were that she had a personality conflict with Mr. Egesdahl and that she was having a transportation problem because her husband (also a Honeywell employee) had by then been transferred to Honeywell's new plant in Arlington Heights, Ill. She was told, in response to her request the Company does not transfer employees because of personality conflicts, and that during the transition of moving its facilities from Morton Grove to Arlington Heights employees were not being transferred because of transportation problems. (R. 224-227)

Petitioner does not argue that Honeywell was legally bound to follow its personnel policies, but contends it is bound to apply them alike to both sexes (Pet. 15). However, she presented no evidence that these policies were differentially applied between males and females. Her petition observes that a record document reveals seven reassignments of persons working in the Quality Department in 1970 and 1971, and concludes therefrom that Honeywell had no policy limiting transfers between its old and new facilities. (Pet. 17-18) However, the reasons for any of these transactions or the locations at which they occurred are not indicated on the document, nor does the document show that any of them occurred between the time of petitioner's request for transfer and her discharge. Even so, the document (Pl. exhibit 17) shows that during 1970-71 one female and two male employees were promoted, and two females and two males were transferred; it also shows two female and five male terminations. This evidence does not support the petitioner's allegation of disparate treatment based on sex, nor does it rebut the validity of the

policy reasons cited by Honeywell for not reassigning her. Further, there is no merit to the petitioner's claim that the Court of Appeals erred in sustaining the trial court's exclusion of (1) a document indicating the number of Honeywell employees in technical, administrative, and clerical jobs by pay grade and sex, and (2) her complete testimony on work performed by her in other jobs[7] (Pet. 18-19). The rejected document was offered by the petitioner solely to establish a *prima facie* case of plantwide sexual stratification (R.154). However, the trial court did in fact find a prima facie case of stratification from other admitted evidence (Pet. App. 3). Thus, the Court of Appeals correctly ruled exclusion of this document was not prejudicial in that it was "largely cumulative" of other evidence. Moreover, although statistics are often helpful in Title VII cases, it is clear that to be of probative value there must be a correlation between statistics offered and the issues in dispute. *Narraine* v. *Western Electric Company, Inc.,* 507 F2d 590 (8th Cir. 1974); *Robinson* v. *City of Dallas,* 514 F2d 1271 (5th Cir. 1975); *Olson* v. *Philco-Ford,* 531 F2d 474, 477 (10th Cir. 1976); *Jimerson* v. *Kisco Co.,* 542 F2d 1008 (8th Cir. 1976). Although statistics may have probative value to show intent or purpose, they are not determinative of an employer's reason for acting in a private non-class action where there is ample evidence to show the employer's actions were not discriminatory. *King* v. *Yellow Freight Systems Inc.,* 523 F2d 879 (8th Cir. 1975); *Terrell* v. *Feldstein Co.,* 468 F2d 910 (5th Cir.

[7] Documentary evidence, stipulated facts, and summary testimony of her employment prior to 1962 was admitted into the record (Pl. exhibit 11, R. 4-5, 59-61). Full testimony on her work duties from 1962 up to February 10, 1972, the date of her discharge, was presented. (R. 61, 64-65, 77, 91-92).

1972). [See also the cautionary observation of this Court in footnote 19 of *McDonnell Douglas* v. *Green,* supra, at 805.] Here there was no showing that the document, which was offered only for an inference of general bias, had any connection with the reasons why the petitioner was not reassigned and was later discharged. Under these circumstances and the existence of justifiable reasons for Honeywell's actions, it was not "clearly erroneous" to exclude these statistics.

Similarly, the record shows that the trial court's initial consideration of the petitioner's testimony regarding the duties she performed on jobs prior to 1962 occurred early in her case-in-chief and before any *prima facie* case had been established. The trial court did not in fact exclude such testimony but stated: "Well, if it becomes necessary to put on some rebuttal testimony, you can do that." (R. 60) Thereafter petitioner's counsel, before closing his case-in-chief, made an offer of proof, but the Court advised him there was no evidence in the record that openings for transfers existed, and that without it, testimony on petitioner's job duties prior to 1962 lacked foundation. (R. 104-106) The trial court stated *again,* however: ". . . if there is a foundation for showing there was a transfer potential, you can show that at the time of rebuttal." (R. 108)

The trial court's reluctance to hear a litany of detailed job duties performed more than 10 years prior to her discharge at the time it was offered was not erroneous nor was it prejudicial to the petitioner. Subsequently, in the trial, testimony was taken as to the petitioner's rejected request for transfer. In turn, Honeywell witnesses testified as to the reasons the petitioner was not transferred (R. 226), and the petitioner had full opportunity to respond.

Although twice advised by the trial court that she could do so, petitioner offered none of the testimony in rebuttal she now contends was erroneously excluded. (R. 286-287) The law does not mandate the trial court dance a judicial minuet in Title VII cases. Honeywell stated its legitimate and uniformly applied policies were the reasons it did not transfer the petitioner. Petitioner did not respond with evidence indicating or even suggesting those reasons were a pretext for discriminatory conduct. She was afforded a fair opportunity to do so; the law mandates nothing more. *McDonnell Douglas Corp.* v. *Green, supra; Sime* v. *Trustees of the California University and College,* 526 F2d 1112 (9th Cir. 1975); *Peters* v. *Jefferson Chemical Co.*, 516 F2d 447 (5th Cir. 1975). The trial court did not err in excluding the testimony under these circumstances.

Petitioner also strongly urges that the Court of Appeals erred in sustaining the trial court's determination that neither the "good faith" nor "wisdom" of Honeywell or its supervisors were an issue in this case. She argues that ". . . such a questioning is absolutely required if Ms. Cichanski is to have her full and fair opportunity to demonstrate . . . the presumptively valid reasons . . . were in fact a coverup for a sexually discriminatory decision" (Pet. 10, 19). However, this Court has clearly articulated that the presence of good intent or the absence of discriminatory intent is not material in reviewing a contested employment decision under Title VII, the consequences of a defendant's actions are controlling, not its intent. *Griggs* v. *Duke Power,* 401 US 424 (1971); *Albemarle Paper Co.* v. *Moody,* 422 US 405 (1975). See also *Williams* v. *General Foods Corp.*, 492 F2d 399 (7th Cir. 1974). Honeywell is in complete accord with these rulings and at no time did it contend that it should be excused in the instant case because of its good faith or the wisdom of its action. More-

over, as noted by the Court of Appeals, the record is replete with evidence supporting the legitimacy of Honeywell's actions. It sustained the trial court's finding that the evidence totally refuted the petitioner's mere inference of discriminatory conduct. Petitioner's *prima facie* inference of sex discrimination was based solely on some evidence of a stratified work force, differential application of working times to different job categories, and an allegation that personnel policies required an employee be transferred and/or 30 days, prior notice be given to higher management before discharge. No evidence was presented by petitioner showing a nexus between those inferences (applicable to employees in general) and the reasons articulated by Honeywell for its actions towards her. The refusal of the Courts below to inquire beyond those reasons and speculate about Honeywell's "good faith" was in strict accordance with the law. Moreover, petitioner had ample opportunity to show those reasons were pretextual, but did not. How the Courts' evaluation of evidence at the conclusion of a full trial on the merits precluded the petitioner from exercising her rights under the standards of *McDonnell Douglas* is not comprehensible.

Stripped of all rhetoric, petitioner's request for certiorari is a plea that the Courts below accorded improper weight to Honeywell's evidence as to the legitimacy of its action in this case. She argues that the inference raised by her *prima facie* evidence should have been credited over the articulated defense of Honeywell. Yet, that inference is barren of any indicia that she was the victim of discrimination. Proof of personal harm is essential for the petitioner to claim that her individual Title VII rights have been violated. *Martin* v. *Thompson Tractor Co.,* 487 F2d 510 (5th Cir. 1973). There is no evidence that a request for promotion was made by the petitioner, or that a trans-

fer opportunity existed. Neither is there any evidence that Honeywell's employment practices were discriminatorily applied to the petitioner or that she was discriminated against in her assigned job duties. Conversely, there is ample evidence that Honeywell uniformly applied its personnel policies without regard to sex, that its failure to reassign the petitioner was for legitimate reasons which were unrelated to her sex and that she was discharged because of a personality conflict with her supervisor and her conduct towards fellow employees. She simply did not present evidence to show that these policies and her treatment under them was a pretext for sexual discrimination against her. It was incumbent upon her to do so. *Sime* v. *Trustees of the California University and Colleges, supra; Teamsters* v. *United States,* ..... U.S. ....., 97 S.Ct. 1843 (1977). Clearly the trial court, as the Court of Appeals found, followed the standards of proof mandated by *McDonnell Douglas.* Just as clearly the petitioner disagrees with the conclusion it reached. Disagreement with its decisions, reached after careful application of the standards set out in *McDonnell Douglas,* however, does not give rise to a question as to whether application of such standards are mandatory.[8]

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[8] Petitioner parenthetically argues a Writ should issue to demonstrate to the ". . . thousands of individual victims of unlawful employment discrimination. . ." (Pet. 19-20) who have come to the federal courts that they are assured the fair administration of justice. Never previously has teh petitioner even hinted that her complaint has class-standing, and it is too late to do so now. *Danner* v. *Phillips Petroleum Corp.,* 447 F2d 159 (5th Cir. 1971); *Nance* v. *Union Carbide Corp.,* 540 F2d 718 (4th Cir. 1976). More importantly, the evidence shows that Ms. Cichanski was not a victim of unlawful discrimination, she was a victim of her own contentiousness and inability to adjust to her working environment. Title VII is designed to eliminate discrimination in working places; it is not designed to protect or correct every frailty of human nature.

2. Petitioner's contention that, even if the Court of Appeals followed the standards of proof mandated by *McDonnell Douglas,* it improperly required a higher standard of proof by the petitioner than would be required if this were a race rather than a sex case, is also without merit. No substantiation is offered, nor is any record evidence cited to show any such higher standard was imposed here. Petitioner simply states that it ". . . seems inconceivable that if a black employee were to demonstrate at trial what Ms. Cichanski did, that the . . . Court would find no evidence of . . . discrimination . . .". (Pet. 22)[9] However, the fact is that the Courts below found only an "inference" of discrimination, and that inference was totally overcome by Honeywell's factual evidence to the contrary.

Recognizing the trial court is in the best position to review the evidence, evaluate the credibility of the witnesses, and determine the facts, Rule 52(a) Federal Rules of Civil Procedure and the courts hold findings of a trial court should not be set aside unless "clearly erroneous." *United States* v. *United States Gypsum Co.,* 338 US 364 (1948); *United States* v. *Oregon State Medical Society,* 343 US 326 (1952); *Glens Falls Ins. Co.* v. *Newton Lumber and Mfg. Co.,* 388 F.2d 66 (10th Cir. 1967), *cert. den.* 390 U.S. 905; *Olson* v. *Philco-Ford, supra.* The fact these findings were contrary to an advisory jury is immaterial. *Moss* v. *Lane Co.,* 471 F.2d 853 (4th Cir. 1973). Petitioner

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[9] If a higher standard of proof had been required here, a basis for review might be present in that courts have applied *McDonnell Douglas* standards to Title VII sex cases. *Causey* v. *Ford Motor Co.,* 516 F.2d 416 (5th Cir. 1975); *Sime* v. *Trustees of California University and Colleges, supra.*

characterizes what would have been the ruling in a race case (Pet. 22-23), but that characterization relies solely on inferences that could be reached on the basis of petitioner's *prima facie* case, wholly ignores evidence to the contrary presented by Honeywell.

Basically, petitioner claims the courts below exhibited an "insensitivity" to her claim and now asks this Court to find discrimination, where there was none. A full four day trial was held on the merits and every facet of it was reviewed by the Court of Appeals. The rules of evidence and the standards of proof set forth by this Court were judiciously followed in those proceedings. No new standards, nor any new issues of law, are presented here for review.

Clearly the petitioner was given a full and fair opportunity to show by rebuttal evidence that Honeywell's articulated reasons for its action were sexually biased. The *total* colloquy offered by the petitioner on rebuttal was as follows:

"Q. Mrs. Cichanski, I only have a few questions. You heard all of the testimony throughout this entire hearing. Did you ever curse at Cindy Bruce?
A. No.
Q. Did you ever call a curse from God down on Sanford Egesdahl?
A. No, because that would be against my religion.
Q. Did you ever curse at any employee?
A. No.
Q. Is everything you have told us throughout the time you have been on the stand, before and now, the truth?
A. Yes.
Q. No further questions." (R. 286-287)

CONCLUSION

Having had a full opportunity to show that her employment was affected by impermissible bias, and that Honeywell's articulated reasons for its actions were pretextual, petitioner should not be granted a Writ simply because she disagrees with the conclusions of the Courts below. Petitioner has not shown that the standards of proof mandated by *McDonnell Douglas* were violated or ignored by those Courts. There is no substantial issue of law here presented for review. Thus, her petition for a Writ of Certiorari to the Seventh Circuit Court of Appeals should be denied.

Respectfully submitted,

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